

The 5th June, 1981

No. 9(1)81-8Lab/6335.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Municipal Committee, Bahadurgarh.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 27 of 1978

between

SHRI JAI KARAN, WORKMAN AND THE MANAGEMENT OF M/S MUNICIPAL
COMMITTEE, BAHADURGARH

Present.—

Shri Harish Chander, for the workman.

Shri Kanwal Singh, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/RK/77/7390, dated 15th February, 1978 under section 10 (i) (c) of the Industrial Disputes Act for adjudication of the dispute existing between Shri Jai Karan, workman and the management of M/s Municipal Committee, Bahadurgarh. The term of the reference was—

Whether the termination of services of Shri Jai Karan was justified and in order ? If not, to what relief is he entitled ?

On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared in response to this notices, filed their respective pleadings and the following issues were framed on the basis of the same:

- (1) Whether the reference is bad in law for his failure to avail his remedy provided in Haryana Municipal Act under rules made thereunder ?
- (2) Whether the workman was appointed on probation for the period from 5th May, 1973 to 4th January, 1975 and his services automatically came to an end on 4th November, 1975 ? If yes, to what effect ?
- (3) If not as per reference ?

The management examined Shri Siri Kishan, Secretary and Shri R. M. Bhardwaj, Fire Station Officer as their witnesses and closed their case. The workman was examined as his own witness and closed his case.

I heard the arguments addressed by both the parties and seen the record and decide the issue-wise as under:—

Issue No. 1.—The management did not produce any evidence on this issue nor pressed this issue during the course of arguments the same is therefore decided against the management.

Issue No. 2.—It has been admitted on both sides that the workman was appointed,—*vide* Ex. M-1 and he gave his joining report i.e. M-2. The service of the workman were extended for one year,—*vide* Ex. M-5. The services of the workman were terminated,—*vide* Ex. M-4. from bare perusal of the appointment letter Ex. M-1 it is apparent that the workman was not appointed on probation nor any period has been mentioned for which he was appointed. Later on after the expiry of six month period the management extended the term of service of the workman for one year,—*vide* Ex. M-5 up to 4th November, 1974. The workman has continued to work after 4th November, 1974 till he was terminated on 4th November, 1975. The management witness M.W. has in his cross-examination expressed his inability to explain as to how the period of one year from 4th November, 1974 to 4th November, 1975 was to be treated. M.W. has also not been able to quote any rule as to for how much period a workman can be employed as a probationer. From the evidence of the parties it has been fully proved that the workman continued to work for another one year after the expiry of the extended period of his term of service and initially also he was not appointed as a probationer but on temporary basis. Accordingly, this issue is decided against the management.

Issue No. 3.—When issue no. 2 has been decided against the management and the management was not justified in terminating the services of the workman without issuing any charges-sheet and holding a proper domestic inquiry which procedure the management has failed to adopt. The workman has not been given any opportunity to show cause and the same is against the principles of natural

justice. This is also an admitted fact that the workman along with other members of the fire staff made a complaint to the Fire Station Officer to the S. D. M. Jajjar which is Ex. W-1 and after this complaint the Fire Station Officer prepared his report against the workman on which the management passed the order of termination Ex. V-V. The action of the management on this ground also cannot be held to be without malice and the same is prompted out of prejudice being against workman. The action of the management cannot be upheld as the same is arbitrary and against the well established rule of justice. The impugned order Ex. M-1 terminating the services of the workman is set aside unjustified and not in order. The workman is therefore entitled to reinstatement with continuity of service and with full back wages. The reference is answered and returned in these terms.

Dated 26th May, 1981.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

Endorsement No. 1764, dated 28th May, 1981.

Forwarded (four copies), to the Secretary to the Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 9 (1) 81-8 Lab/6336.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Nav Bharat Industries, Rohtak.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 34 of 1979

between

SHRI JASPAL SINGH, WORKMAN AND THE MANAGEMENT OF M/S NAV BHARAT
INDUSTRIES ROHTAK

Present—

No one, for the workman.

Shri K. S. Bhatnagar, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor - vide his order No. ID/RTK/S-79/3991, dated 28th January, 1979 under section 10(i)(c) of the Industrial Disputes Act, for adjudication of the dispute existing between Shri Jaspal Singh, workman and the management of M/s Nav Bharat Industries, Rohtak. The term of the reference was—

Whether the termination of services of Shri Jaspal Singh was justified and in order ?
If not, to what relief is he entitled ?

On the receipt of the order of reference, notices as usual were sent to the parties. The parties put in their appearance in response to the same. filed their respective pleadings on the basis of which the following issues were framed :—

- (1) Whether this court has no jurisdiction to entertain this reference ?
- (2) Whether the workman reported for duty within a week from the date of lifting of lock-out on 2nd May, 1980 ?
- (3) Whether the workman absented himself voluntary and did not report for duty up to 10th June, 1980 and lost his lien of his post as per standing orders ?
- (4) If not as per reference ?

The workmen examined himself as his witness on 1st November, 1979 and did not adduce any remaining evidence till 1st August, 1980 when no one appealed on his behalf and he was proceeded against *ex parte*. *Ex parte* evidence of the management was recorded on 3rd November, 1980. Arguments on behalf of the management were also heard. I have also seen the evidence on record and decide issue wise as under :—

Issue No. 1. Issue No. 1 was not pressed by the management and the same is decided against them,

Issue No. 2.—The workman has not been able to prove that he reported for duty within a week from the date of lifting of the lock-out on 22nd May, 1978. He has stated that he made a complaint to the Labour Inspector but he has not produced no copy of the complaint or the same was proved otherwise. He has further stated in his cross-examination that he had talked about the non-providing of duties by the management before the union and the union also discussed the matter verbally with the management. The oral evidence of the workman has not been corroborated by any co-worker or any official of the union and the same cannot be put reliance to. This issue is therefore decided against the workman.

Issue No. 3.—The management examined Shri Kishan Chand, Personal Officer who proved Ex. M-1, M-2 and M-3 which are the notices of declaring lock-out, settlement under section 12(3) of the Industrial Disputes Act and the notice of lifting of the lock-out respectively. MW-1 has further stated that the workman did not resume his duties till 9th June, 1978 and his name was struck off in accordance with the certified standing orders which provide for such action when an employee remains absent for 10 or more than 10 days. The copy of the extract of the certified standing orders is Ex. M-4. When issue No. 2 has been proved against the workman and the workman chose not to participate in the later stage of the proceedings *ex parte* statement of the MW-1 supported by documentary evidence is relied upon and this issue is accordingly decided in favour of the management.

Issue No. 4.—When issue No. 2 has been decided against the workman and issue No. 3 has been decided in favour of the management it is held that the workman absented himself voluntarily and did not report for duty up to 10th June, 1978 thereby losing his lien on his job under the certified standing order. The termination of the workman is therefore, justified and in order. The workman is not entitled to any relief. The reference is answered and returned accordingly.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

Endorsement No. 1763, dated 24th May, 1981.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

The 25th June, 1981

No. 9(I) 81-8 Lab./6783.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. The Karnal Co-op. Sugar Mills Ltd., Karnal.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

References Nos. 211, 210, 214, 221, 223 all of 1978

between

SARVSHRI BALJIT SINGH, OM PARKASH, RAGHUBIR SINGH, BAHADUR SINGH AND RAJINDER SINGH, WORKMEN AND THE MANAGEMENT OF M/S. THE KARNAL CO-OP. SUGAR MILLS LIMITED KARNAL.

Present.—

Shri Madhu Sudan, for the workmen.

Shri Surinder Kaushal, for the management.

AWARD

These references have been referred to this court by the Hon'ble Governor, - vide his order No. ID/KNL/19-78/34572, dated 24th July, 1978, ID/KNL/1978/34536, dated 24th July, 1978, ID/KNL/19-78/34590, dated 24th July, 1978, ID/KNL/1978/34647, dated 24th July, 1978, ID/KNL/19-78/34661, dated 24th July, 1978, under section 10(i)(c) of the I. D. Act for adjudication of the dispute existing between the workmen and the management of M/s. The Karnal Co-operative Sugar Mills Limited, Karnal. The term of the reference was :—

"Whether the termination of services of workmen were justified and in order ? If not, to what relief are they entitled ?

On the receipt of the order of reference notices as usual were sent to the parties who put in their appearance in response to the same, filed their respective pleading and the following issues were framed on the basis of their pleading :—

1. Whether the espousal by substantial number of workmen is necessary ? If not, to what effect ?
2. Whether this court has no jurisdiction to decide the dispute ?
3. As per reference ?

My learned predecessor ordered to consolidate these references as all these involved the common questions of law and fact. Evidence and further proceedings were to be recorded in reference No. 211 of 78 which was to be read in all these cases. By this award I dispose of all these references. The management examined Shri B. S. Bhatia, Accounts Officer and closed their case. The workmen themselves were examined as their witnesses.

I heard the learned representatives of the parties and have also seen the record. I decide the issueswise as under :—

Issue No. 1.—The management did not lead any evidence on this issue and during the course of arguments the management representative in clear terms stated that he did not press for this issue. On the other hand the workmen representative argued that after the introduction of section 2(A) of the Industrial Disputes Act an individual can raise the industrial dispute in respect of his dismissal, termination etc. without the support of the union or a substantial number of co-workmen. Under these circumstances I agreeing with the contention of the workmen representative decide this issue against the management.

Issue No. 2.—The management did not lead any evidence on this issue also nor they pressed on this issue during the course of arguments. Rather the management representative categorically stated that he gives up this issue. The same is therefore decided against the management.

Issue No. 3.—The case of the management is that a meeting of the Managing Directors of Sugar Mills was held on 2nd September, 1977 under the chairmanship of Chief Minister, Haryana wherein it was decided alongwith other things that there was over staffing in the factories much in excess of requirements and there was room for cutting down the strength of the staff and screening of the staff should also be made so as to weed out inexperienced, incompetent and undesirable persons. Screening committee was formed and on receipt of recommendations from the screening committee the meeting of the Board of Directors was held on 14th October, to consider and approve the recommendations of the staff screening committee. Ex. MW-1/2 was the copy of the proceedings. It was decided to abolish some of the posts and to retrench some of the other workmen who were found surplus as per the law. All these workmen were given notices of termination and they were paid the notice pay alongwith the retrenchment compensation who so ever was eligible to receive the same. The reduction in the staff was made in order to effect economy as the management experienced heavy losses during the first season.

The workmen have also admitted the receipt of notices of termination as well as the retrenchment compensation but the workmen have stated that they had not been served with notices under section 9(A) of the Industrial Disputes Act for effecting changes in conditions of their services which fact has also been admitted by the management witnesses in their cross-examination. The decision taken in the meeting of the Managing Directors and the decisions taken in the meeting of the Board of Directors and the admissions of the workmen regarding the receipt of notices and retrenchment compensation goes to justify the action taken by the management and proves the bona-fides of the management but the management has not been able to fulfil the mandatory provisions of section 9(A) of the Industrial Disputes Act, 1947 which is reproduced as under :—

No employer who propose to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule shall effect such change.

- (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of nature of the change proposed to be effected; or
- (b) without twenty one day of giving such notice.

Notice under section 9(A) is a must when conditions of service are to be changed in order to bring about Rationalisation, Standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen. Rationalisation further connotes in relation to an industry "to organise so as to achieve greater efficiency and economy." The management has undoubtedly effected such changes in order to achieve better results with less staff. The non observance of the provisions contained in section 9(A) has rendered the order of retrenchment termination improper and as such illegal but for this action of the management would have been perfectly justified and legal both. The awarding of full back wages to the workmen under these circumstances when the management has acted in a bona fide manner and according to them observing all the legal formalities would be unjust. This is a legal lacuna which went unobserved by the management and for this lapse on their part the reinstatement of the workmen will be a just and proper penalty to the management for not complying with the provisions of section 9(A) of the Industrial Disputes Act. I therefore direct the management to reinstate the workmen namely 'Cry Shri Paljit Singh, vs. Cm Parkash, Raghbir Singh, Bahadur Singh and R. Jinder Singh with continuity of service and 50% back wages as all the workmen have denied the suggestion put to them by the management representative in their cross examination that they did not try for obtaining some job during the period of unemployment. All of them have stated that they got registered their names with the Employment Exchange and also tried their best to secure job for them but they could not. Under these circumstances the workmen cannot be deprived of whole of their wages. But the management has acted in a bona fide manner without any ulterior motives, the management deserves some concession which they are granted in the form of 50% back wages in place of full back wages which they were liable to pay to the workmen under the normal rules.

The references are answered and returned in these terms. It is further ordered that a copy of this award may also be placed on each of the files in references No. 210, 214, 221 and 223 all of 1978.

Dated the 30th May, 1981

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

Endorsement No. 1891, dated 6th June, 1981

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the I. D. Act.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 9(I) 81-8Lab/6967.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Forgewell Private Ltd., Industrial Area, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 29 of 1979

between

WORKMEN AND THE MANAGEMENT OF M/S FORGEWELL PVT. LTD.,
INDUSTRIAL AREA, FARIDABAD

Present:—

Shri R. N. Roy, for the Workman.

Shri K. P. Agrawal, for the management.

AWARD

By order No. 1149, dated 8th August, 1981, the Governor of Haryana referred the following dispute between the management of M/s. Forgewell Private Limited, Industrial Area Faridabad and its workmen to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of subsection (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the lock-out declared by the management is justified and in order? If not, to what relief the workmen are entitled?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 12th July, 1979:—

1. Whether there is industrial dispute in existence between the management and the workmen?
2. Whether Mercantile Employees Association has locus-standi to raise the dispute?
3. Whether the dispute is espoused properly by a substantial number of workmen?
4. Whether the reference is bad for the reasons that the Government did not apply their mind in making the reference?
5. Whether there was any lockout as defined in the Act declared by the management? If so, whether that lockout was justified?

And the case was fixed for the evidence of the workmen, who examined Shri R. N. Roy, President Mercantile Employees Association as W.W. 1, Shri Kalap Nath concerned workman as W.W. 2, Shri Trilok Singh as W.W. 3, Shri Hari Ram as W.W. 4, Shri Adhya Tiwari as W.W. 5 and Shri Hoob Lal as W.W. 6. Then the case was fixed for the evidence of the management, who examined Shri K. M. Khandelwal as MW-1 and closed their case. Arguments were heard. Now I give my finding issueswise:—

Issues No. 1 to 3:— W.W. 1 stated that the workmen of Delhi Forgings and Stampings Private Limited, Faridabad are members of his union. In September 1978 the management opened another factory named as Forgewell Private Limited. The supervisory staff of Delhi Forgings Private Limited was transferred to M/s. Forgewell and some workmen were also transferred. Some machinery was also shifted to that factory, therefore, he served a demand notice Exhibit M. 56 on the management absorbing the workmen of M/s Delhi Forgings and Stampings Private Limited, Faridabad which were laid off. In cross-examination he stated that he had not visited M/s. Delhi Forging and Stamping Private Limited. He admitted it as correct that the factory named M/s Delhi Forging and Stamping Private Limited was situated in Ballabgarh and M/s. Forgewell in D. L. F. area Mathura Road, Faridabad. He further stated that he could not produce any letter regarding transfer of any workman or staff member from M/s. Delhi Forging and Stamping Private Limited to M/s. Forgewell Private Limited. It was correct that M/s. Delhi Forging and Stamping Private Limited and M/s. Forgewell Private Limited were two distinct and separate legal entity and registered as two different factories under the Factories Act. There was no strike, lay off, closure or lockout in the factory but lockout was thereby which he meant that the workmen did not work there. He further replied that the workmen of M/s. Forgewell Private Limited never declared lockout in there factory. They only refused to take these workmen in their employment. W.W. 2 stated that he worked in M/s. Delhi Forging and Stamping Private Limited from 1975 to 1978. On 6th December, 1978 the management refused to mark him laid off attendance. In cross-examination he admitted that no workmen or staff was transferred from M/s. Delhi Forging and Stamping Private Limited to M/s. Forgewell Private Limited Faridabad but those who applied for new job got employment. W.W. 3, W.W. 4 and W.W. 5 other witnesses also stated on the same lines. W.W. 6 stated that he had appeared in the conciliation proceedings on behalf of the workmen. Letter of authority and espousal was filed with the claim statement in original. Other letter of authority was Exhibit M.W. 6/1.

M.M. 1 stated that M/s. Forgewell Private Limited was started from 1978. There was no lockout or strike in the factory. It had no concern with M/s. Forging and Stamping Private Limited.

The learned representative for the management cited 1975 ILLI page 293 and 1975 Supreme Court Cases L & S 483 and argued that the workmen have not proved any espousal which was necessary as the case falls under section 10(1) of the Industrial Disputes Act. In the absence of espousal the dispute could not be considered as an Industrial Dispute. In fact these workmen were never in the employment of M/s. Forgewell Private Limited. I find force in his contention. And decide these issues in favour of the management.

Issues No. 4 and 5.—The matter under reference is whether the lockout declared by the management is justified and in order. The dispute being between the workmen and the management of M/s. Forgewell Private Limited Industrial Area Faridabad whereas according to demand notice the workmen were employees M/S. Delhi Forging and Stamping Private Limited. But lockout is alleged in the demand notice by M/s. Delhi Forgings and Stampings Private Limited. W. W. I has admitted in his statement that M/s. Forgewell Private Limited never declared any lockout. He could not even give the names of any workman who was transferred from one factory to the other. Under the circumstances I find the reference as misconceived and decide both the issues in favour of the management.

On the findings given by me on the issues above, I give my award that the workmen are not entitled to any relief. I order accordingly.

M. C. BHARDWAJ,

Dated the 2nd June, 1981.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 540, dated the 6th June, 1981

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)31-8Lab '6966.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Deepak Tools, (P) Ltd., Mathura Road, Faridabad:—

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 199 of 1976
between

SHRI RAJA RAM WORKMAN AND THE MANAGEMENT OF M/S. DEEPAK
TOOLS (P), LTD., MATHURA ROAD, FARIDABAD

Present:—

Shri R. L. Sharma for the workman.

Shri D. R. Mahajan for the management.

AWARD

By order No. ID/FD/1073-B-76/34600, dated 21st September, 1976 the Governor of Haryana referred the following dispute between the management of M/s. Deepak Tools (P) Ltd., Mathura Road Faridabad and its workman Shri Raja Ram, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Raja Ram, was justified and in order ?
If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 4th May, 1977:—

1. Whether the workman served the management with a demand notice properly ? If not, to what effect ?
2. Whether the workman lost his lien by absenting himself for 10 consecutive days as per Model Standing Order ?
3. Whether the termination of services of the workman concerned was justified and in order ? If not, to what relief is he entitled ?

And the case was fixed for the evidence of the workman. At the stage evidence there was none present for the management, therefore, *ex parte* evidence was recorded and award was passed by my predecessor on 28th July, 1979. Later on this award was set aside by order dated 28th January, 1980

and the case was fixed for the evidence of the management who examined Shri Deepak Mahajan, Managing Director as MW-1 and closed its case. The workman appeared himself as his own witness and closed his case. Arguments were heard. Now I give my finding issues wise:—

Issue No. 1.—The workman on 27th March, 1978 was examined on this issue and stated that the demand notice was given to the Conciliation Officer which was Ex. W-1. He further stated that no other demand notice was given by him. There is nothing remains for decision as the workman has admitted that he did not submit any demand notice to the management. According to 1968 I.L.D. page 834 (S. C.) it is necessary to raise the demand first on the management and rejection by it for making the dispute an Industrial Dispute, therefore, this issue is decided in favour of the management.

Issue No. 2:—MW-1 stated that the workman joined service on 9th February, 1976. According to attendance register he remained absent from 2nd July, 1976 to 20th July, 1976. He was addressed letter Ex. M-2 and M-3 by UPC receipt Ex. M-4 and M-5. He was on probation for six months. As he did not turn up, therefore, his name was removed from the rolls. In cross-examination he stated that appointment letter Ex. M-1 bears signatures of the workman.

The workman in his cross-examination admitted address on Ex. M-1 to M-3 as correct. These were letters of re-call written by the management to him. Under the circumstances, the workman absented himself from 2nd July, 1976 to 20th July, 1976, and lost his lien according to the Model Standing Orders. He had only about less than six months of service at his credit only, therefore, this issue is also decided in favour of the management.

Issue No. 3:—There is nothing unlawful in the action of the management in terminating his service.

While answering the reference, I give my award that the workman lost his lien by absenting himself. The workman is not entitled to any relief.

M. C. BHARDWAJ.

Dated 2nd June, 1981.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 539, dated 6th June, 1981

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9 (1) 81-8 Lab. 7208.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. Haryana Minerals Ltd, Narnaul:—

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 236 of 78

between

SHRI RAM NIWAS SONI, WORKMAN AND THE MANAGEMENT OF M/S. HARYANA MINERALS LTD., NARNAUL

Present: —

Shri S. K. Yadav, for the workman.

Shri M. C. Gupta, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/GG/5-E-78/38449, dated 22nd August, 1978 under section 10(i) (c) of the Industrial Disputes Act for adjudication of the dispute existing between Shri Ram Niwas, workman and the management of M/s Haryana Mineral Ltd., Narnaul. The term of the reference was:—

Whether the termination of services of Shri Ram Niwas Soni, was justified and in order? If not, to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance, in response to the same, filed their respective pleadings, on this basis of which the following issues were framed:—

1. Whether the workman was employed on purely temporary basis? If so, to what effect?

2. If issue No. 1 is proved against the management, whether the termination of services of the workman was justified and in order ?
 3. Relief ?

The management examined Shri K. P. S. Chahan, Factory Manager as their witness and closed their case. The workman examined himself and Shri Ram Kumar Sharma, Clerk of the Office of Labour Officer, Gurgaon as his witnesses and closed his case.

I have heared the learned representative of both the parties and have gone through the evidence carefully and decide the issues as under :—

Issues No. 1 to 3.—

It has been admitted on both sides that the workman was appointed,—*vide* appointment letter Ex. M-1 as a store man on temporary basis and his services were liable to be terminated without assisging any reason and without any notice. The workman remained in service for more than two years. He was fined twice and issued warnings for his negligence and lack of interest in performance of his duties,—*vid.* Ex. M-2, Ex. M-3. The show cause notice is dated the 5th October, 1976. The original of which is marked Ex. M-8 on which the workman has put his signatures at point 'A' encircled red. Then after the termination order Ex. M-7 was passed on 5th February, 1977.

The management has contended that as the terms and conditions given in the appointment letter Ex. M-1 provide for the termination of services of the workman without any notice or without any reason and the order of termination passed on the basis of show cause notice Ex. M-4 is only a discharge simplister and in accordance with the contract of service. It has also been an admitted fact that the management did not pay any service compensation to the workman at the time of his termination to which he was legally entitled what ever be the terms of his service even when he is taken to be working on temporary basis as required under section 25(F) of the Industrial Disputes Act. The workman has specifically denied the fact that he was ever fined and warned for negligence and lack of interest as alleged by the management and never received Ex. M-2, M-3 and M-4 whereas Ex. M-4 which is the attested copy of Ex. M-8 which bears the signatures of the workman. The contention of the workman is not tenable that he was not aware of Ex. M-8 and when the workman did not submit any reply to Ex. M-8 shows that he admits the allegations and has nothing to say against the same which further goes to prove that the past record of service of the workman has not been clean and satisfactory. The plea of the workman that he was appointed by the General Manager and the order of termination has been issued under the signatures of the Factory Manager who has signed for the General Manager is not proper and legal, is without force as has been provided in the charter of duties relating to Factory Manager who is authorised to officiate as General Manager in his absence. The workman has also admitted in his cross examination that he had purchaged buffalows and was engaged in selling the milk but he has not stated as to how much income he derived from this business which in my opinion cannot be less than Rs 300 the salary which he was getting at the time of his termination. The management has not been able to justify the termination fully as the mandatory provisions of section 25(F) have not been fulfilled by them as every termination amounts to retrenchment except on retirement or continued ill health continued. Under these on circumstances I am constrained to hold that the termination of the workman is not justified and not in orders. The workman is entitled to reinstatement with continuity of service but without back wages as has been discussed above. The reference is answered and returned in these terms.

BANWARI LAL DALAL,
 Presiding Officer,
 Labour Court, Haryana,
 Rohtak.

Dated the 13th June, 1981.

Endst. No. 1954 dated the 16th June, 1981

Forwarded (four copies) to the Secretary to Government of Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Dispute Act.

BANWARI LAL DALAL,
 Presiding Officer,
 Labour Court Haryana,
 Rohtak.

H. L. GUGNANI,
 Commissioner & Secretary to Govt. Haryana,
 Labour and Employment Departments.